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STATE INITIATIVES ON FEDERAL WATER PROJECTS

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Introduction

Most of the major water development, flood control and hydropower projects in Montana have been constructed by federal agencies. The three principal federal agencies which construct water projects are the Soil Conservation Service (SCS), Water and Power Resource Service (WPRS), formerly the Bureau of Reclamation, and the U.S. Army Corps of engineers.

The importance of the projects of these agencies to the state's water resources can hardly be over estimated. Federal projects include Fort Peck Dam, Libby Dam, Yellowtail Dam, Canyon Ferry and numerous others. A single irrigation project, Greenfields Bench provides irrigation water for 80,000 acres is essential to the regional economy and has created the single largest erosion problem in the entire state. On a smaller scale the Soil Conservation Service has constructed numerous local irrigation and storage projects.

The federal water agencies and their projects have been widely praised for providing the mainstay of Montana's agricultural economy. They have also been cursed for the tremendous environmental impacts of their projects. Many of the state's finest floating and fishing streams are now covered by federal reservoirs.

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others. These agencies have a reputation for actively promoting their proposals and they have often demonstrated considerable political power and skills in moving these projects past considerable opposition. On the other hand, some relatively popular federal projects have been dropped at the planning stage due to a lack of well-coordinated state or local support.

The State of Montana cannot avoid a major role in determining the nature and scope of federal projects within the state. The federal agencies request executive support of their proposals and the governor's opposition will stop federal projects. Local government, citizens and the Montana congressional delegation turn to state government for support or opposition of projects that affect them. The purpose of this paper is to examine two issues relating to the role DNRC should play in the development of federal water projects.

PRESENT DNRC ROLE IN FEDERAL PROJECT DEVELOPMENT

There are four basic avenues traditionally used by state government in exerting leverage over federal water project proposals. The most basic is an expression of support or opposition by the governor to a federal proposal. Executive opposition to a project in the planning stages will stop the project immediately. The state position is generally developed by state agencies working with the governor's office. A fine example of this process is the recent preparation of a state position on the National Hydropower Study which is being done by the Army Corps of Engineers.

The Corps study began with a long list of all potential hydropower sites in the nation. The sites are tabulated on a state-by-state basis and evaluated by an increasingly stringent set of screening criteria. The evaluation by these criteria which consider economic, environmental and social constraints, will result in a pared down list of acceptable sites for which the Corps will request funding for more detailed feasibility studies.

The states have veto power over all projects on the list i.e. all projects opposed by the state will be summarily dropped. The Water Resources Division of DNRC met with personnel from other DNRC divisions and other state agencies to evaluate and develop a common position on the Corps list of projects that had passed initial screening criteria. This position paper, which was recently presented to the Corps has recommended that many proposals are unacceptable and that the Corps study process does not allow for an adequate state evaluation of some proposals.

A second avenue for state agencies to influence federal projects is by providing technical advice to the state's congressional delegation. For example, DNRC in cooperation with the Department of Fish, Wildlife and Parks has developed a package of measures to partially mitigate the adverse environmental impacts of converting Canyon Ferry to a peaking facility. This package was accepted by Senator Melcher and funding is included in an authorization and appropriation bill currently pending before Congress.

A third means to influence federal projects is to assist local citizens in promoting or modifying federal proposals in their region. This can be accomplished through technical assistance in determining needs and evaluating

options, by assisting the locals in getting political support and by helping them find funding sources. A prime example of this is the assistance provided to the Muddy Creek Task Force which is working to rehabilitate the federal Greenfields Bench irrigation project in order to reduce erosion in Muddy Creek which serves as a wastewater channel. DNRC and the Water Quality Bureau of the Department of Health have assisted the task force by funding their initial efforts and by providing technical advice.

The final method for influencing federal projects is by working to ensure that desirable projects receive high priority in the yearly priority report at the appropriate river basin commission.

Both the Columbia and Missouri River Basins have federally established commissions whose function is to coordinate local, state and federal water resources activities. Each year the states submit to the commission a list of their priority activities for the coming year. The commissions use these lists to develop the top priorities within the basin for the coming years. The priorities listing is influential for Congress and is a good avenue for promoting desired projects. The listing of a project also means that the river basin personnel will be lobbying Congress to support that project.

This examination of DNRC's role in the development of federal projects will consider two specific issues. Should the state develop a Memorandum Agreement with federal agencies that is similar to one recently agreed upon between California and the Water and Power Resource Service? The second is if DNRC should make a commitment of staff time and resources in support of selected federal projects.

I. MEMORANDUM OF AGREEMENT

The Agreement between WPRS and the state of California, which is reproduced below, was designed primarily to facilitate the issuance of water rights associated with WPRS projects. It was formulated following a court decision which ruled that the state could condition a federal water right.

"The State Water Resources Control Board (State Board), the State Department of Water Resources (Department), and the United States Bureau of Reclamation (USBR), in order to assure proper coordination in the process of Federal project formulation and authorization, preparation, and clearance of environmental impact statements, and State water rights determination, consider it to be desirable to agree upon a procedure to be followed when Federal water projects (which include appropriation of the waters of the State of California) are proposed. The parties therefore do agree as follows:

I. General Understanding

Maximum coordination between State and Federal authorities is necessary to achieve responsible management of the water resources of the State.

II. Specific Objective

The objective of this Memorandum is to eliminate conflicts between the plan of the authorized project and terms and conditions of California water right entitlements early in the planning process.

III. Procedure

The following procedure will be followed by the party to this memorandum with respect to USBR project proposals:

1. Preliminary investigation by USBR to appraise the possibilities of developing a viable project proposal. All interested California persons and agencies, including but not limited to, the State Board and the Department, will be kept informed of the initiation and progress of such preliminary investigations.
2. Initiation by USBR of a Feasibility Study, following authorization of a study by Congress.
3. Involvement in the planning and project formulation process by representatives of the State Board, along with other local, State, and Federal agencies, within any administrative and legal constraints, as a function of a total public involvement program. The involvement shall consist generally of keeping the agencies informed of the status of planning and project formulation work being conducted and furnishing them with copies of reports, studies, and other documents as prepared.
4. Completion of the USBR Regional Director's Proposed Feasibility Report of a project plan and a "working paper" EIS and their distribution to all appropriate persons and agencies for informal review comments.

5. Filing by USBR of a water rights application or request for assignment or release from priority of State filings, as appropriate under the specific circumstances.*

6. Informal review comments prepared by all state agencies, including representatives of the State Board, and the consolidation by the State of these review comments in identifying the state's position on the plan of development, excluding such determinations as must await exercise of any applicable State Board adjudicatory functions.

7. State Board processes water rights application or request for assignment or release from priority of a State filing preparatory to water right hearing where applicable.**

8. The USBR pursues its report and EIS preparation and clearance process, taking into consideration all appropriate review comments received, and proceeding through all steps necessary to evolve an adopted Secretary of Interior Proposed Report and transmits draft EIS to the Environmental Protection Agency.

9. Such Proposed Report, as provided in section 1(c) of the Flood Control Act of 1944 or other pertinent statutes; and such draft EIS, as provided for by administrative determination, are submitted by the Secretary or his representative to all appropriate parties, including the State of California, for review.

10. State Board holds water right hearing on USBR water rights application.

11. State Board adopts water right decision including appropriate terms and conditions to be placed in any water right permit issued by USBR.

12. Feasibility report and EIS revised where determined to be appropriate by USBR following receipt of all review comments.

13. Secretary includes State Board decision with project proposals submitted to Congress."

This agreement could be expanded in a number of ways. Such an agreement could clearly spellout the role of the state in the federal water planning process.

The agreement could also serve as a vehicle to coordinate the Environmental Impact statement responsibilities of the federal agency and the DNRC. DNRC must prepare an EIS as part of the administrative process of issuing water rights if the issuance of the right could result in a significant environmental impact. It may be more efficient to incorporate this EIS into the federal agency EIS on the project than to do them separately.

There are four offices with which DNRC could pursue such an agreement, WPRS in Billings and Boise and the Army Corps of engineers in Omaha and Seattle. The Billings office of WPRS initiated the process and the

development of an agreement with them would probably occur first. This agreement would serve as a model in discussions with the other offices.

There are several advantages to be gained by such an agreement. This could provide an ammendment for the coordination of state and federal EIS studies. The DNRC would be more effective in developing a state position on a project if it has an insider's access to the federal agencies planning process. This information would also ensure that the Division would be better prepared to assist the Congressional delegation as requested.

The primary disadvantage to the state would be the staff time required for this type of involvement with the federal agencies.

II. SUPPORT OF SELECTED FEDERAL PROJECTS

There are a number of potential water development projects remaining in the state which the federal agencies are interested in implementing. In some instances the state too would like to see some of these developed. Examples include offstream storage sites in the Yellowstone basin for which the Board of Natural Resources and Conservation has established water reservations, and rehabilitation work on the Muddy Creek Project.

DNRC support of such projects has been generally limited to lobbying efforts. Desirable projects recieve support in the priorities report of the river basin commissions. DNRC has assisted the Montana congressional delegation with information on the benefits, costs and impacts of federal project proposals and has provided the analysis on which official state

positions in support of a project have been based. In addition the Department has met with local sponsors of potential projects to assist them in securing the backing of a federal agency for their proposal. These types of assistance can be valuable in helping local sponsors obtain federal backing for a project in their area. However, some desirable projects get stalled for technical or institutional reasons and a different type of assistance is needed to get these projects moving.

These projects need a project coordinator, someone to organize and coordinate the numerous activities needed to effectively present the local support for the projects. In some cases these projects have been idle so long that effective project promotion requires the efforts of an engineer to update the feasibility studies before the project can move ahead.

The services offered by the technical assistance engineer would include information and recommendations on water rights, sources of funding, group organization, and engineering, economic and financial feasibility. The technical assistance provided could assist a local group in understanding the benefits and costs of their project.

DNRC has generally not provided these types of assistance due to a lack of personnel. In order to effectively provide this type of project assistance two additional positions would be needed, one to provide project coordination and the other to perform the technical work needed to update the feasibility studies perform other technical analysis.

This section of the paper presents two choices. DNRC can continue its present level of assistance for federal projects or it can expand them by adding a project coordinator and an engineer to get stalled federal projects past difficult obstacles. The big advantages of this is that it could be a low budget means of getting a relatively large amount of federal money for project development. The state may well get more project development for its investment here than in other investment outlets. The disadvantage still remains however that hiring people costs money. The basic question is if the benefits of this additional program warrant the costs.



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